

REMARKS

Claims 2-18 are pending in this application. Claims 2-18 stand rejected. By this Amendment, claims 2-18 have been amended. The amendments made to the claims have not been made to define over the prior art. Rather, the amendments to the claims have been made to improve the form thereof and remove unnecessary limitations, thereby broadening their scope. In light of the amendments and remarks set forth below, Applicant respectfully submits that each of the pending claims is in immediate condition for allowance.

Claim 2 was rejected under 35 U.S.C. § 112 second paragraph as being indefinite. Claim 2 has been amended to differentiate the preamble from the body of the claim, in accordance with the Office Action's comments.

Claims 17-18 were also rejected under 35 U.S.C. § 112 second paragraph as being indefinite. Claims 17-18 have been amended to differentiate the preamble from the body of the claim, in accordance with the Office Action's comments.

Claims 2-16 and 17-18 were rejected under 35 U.S.C. § 101. These claims have been amended to be in compliance with 35 U.S.C. § 101.

Claims 2-3, 11, 12, and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,845,255 to Mayaud ("Mayaud"). Claims 4-6 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mayaud in further view of U.S. Patent No. 6,564,104 to Nelson ("Nelson"). Claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mayaud in view of U.S. Patent No. 4,882,474 to Anderl *et al.* ("Anderl"). Claims 9, 14, and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mayaud in view of U.S. Patent No. 5,781,442 to Engleson *et al.* ("Engleson"). Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Mayaud in view of Engleson and in further view of Nelson. Applicant respectfully traverses these rejections.

As amended, claim 2 recites “providing the patient user via at least one of the plurality of user terminals with a user ID, a user password, a second password, and space for storing information concerning the patient user’s medical treatment in the database.” Mayaud neither discloses nor teaches this limitation.

First, unlike the “patient user,” in this limitation of claim 2, the users who have access to store data are healthcare professionals, not patients. Mayaud is “an intelligent, knowledgeable computerized prescription pad.” Col. 9, lns. 65-67. As such, Mayaud allows health care professionals to access both patient information and pharmaceutical information for the purpose of creating prescriptions. This system necessitates the exclusion of patients from obtaining the access privileges recited in claim 2. In claim 2, the patient user is provided with “space for storing information concerning the user’s medical treatment in the database.” The patient user is actively involved in the storing of data concerning his or her treatment. Mayaud contemplates only limited access for patients and not access related to “storing of data.” Instead, a patient using Mayaud may have “data access rights,” and/or rights to “control the flow of their own data,” Col. 46, ln. 46; col. 50, lns. 46-51. Data access rights are understood by one of ordinary skill in the art as rights to view, but not to manipulate data. Controlling the flow of data involves deciding whether to release data, not manipulating the data itself.

Mayaud, a “Prescription Management System,” cannot allow patients access to “space for storing information concerning the patient user’s medical treatment in the database,” as required by claim 2. Allowing a patient this level of access to a “computerized prescription pad” would undermine Mayaud’s purpose.

Second, claim 2 recites “space for storing information concerning the patient user’s medical treatment in the database.” Contrary to this information storage in claim 2, Mayaud teaches “using a dynamically assembled virtual record, and never storing it.” Col. 9, lns. 8-10. Mayaud teaches this approach in order to avoid “proliferation of a patient’s confidential history.”

Col. 9, lns. 13-14. Meanwhile, claim 2 requires the proliferation of patient information in a repository.

Among the limitations of independent claim 2 not present in the cited reference is also “notifying at least one of the plurality of hospital terminals of the user ID and the second password of the patient user.” Applicant respectfully submits that none of the portions of Mayaud cited by the Office Action actually disclose the hospital receiving a notification of the user ID and the second password of the user.

Mayaud at col. 10, lns. 40-44, refers to the fact that the system is device independent such that with the appropriate passwords, a user can log onto the system. Likewise, Mayaud at cols. 17 and 18 refers to patient data security. Here, patient record security and patient control of his or her own data is discussed. However, at no time is a patient password provided to the hospital. Finally, Mayaud at col. 49 refers to user IDs listed by a prioritized listing in one or more devices where the user may be accessed. However, this is unlike the explicitly recited limitation of the hospital receiving notification of the ID and second password, the password of the user.

Applicant notes claim 2 recites that the user is a patient who acquires a user ID, a user password and a second password. The second password, as discussed above, is acquired by a patient, not a hospital. The second password is given to a hospital and is required for users other than the patient user to acquire medical information regarding the patient user.

The system in Mayaud discloses that individuals and organizations can be given patient-defined selective access to patient generated records. Mayaud fails to disclose a specific patient generated records access password. Further, Applicant notes that Mayaud fails to disclose using all four keys at the same time to access data. Applicant notes that there is no reason for one skilled in the art to modify Mayaud to arrive at the present claims.

Neither Nelson, Anderl, nor Engleson either alone or in combination with each other or with Mayaud remedy the deficiencies of Mayaud discussed above with respect to claim 2. For at least the foregoing reasons, claim 2 is patentable over Mayaud.

Claims 3-16 depend from claim 2 and contain further limitations which are not disclosed or suggested in the prior art. Accordingly, claims 2-16 are patentable over Mayaud and over Mayaud in combination with any of the additional cited prior art references.

Claims 17 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mayaud in view of U.S. Patent No. 4,882,474 to Anderl *et al.* (“Anderl”). Claims 7 and 8 depend from claim 2; claim 17 is an independent claim; claim 18 depends from claim 17.

As amended, independent claim 17 recites, “a first computer readable medium containing a program that when executed by a processor sends a user password and a second password to a user terminal.” Page 15 of the Office Action admits that Mayaud does not disclose this limitation, but claims that Anderl discloses it. Applicant respectfully disagrees.

Anderl discloses the use of a card containing files with personal information that can be retrieved and modified when combined with software on a workstation and an appropriate password. *See* Col. 2, Ins. 3-9. This functionality is not analogous to “a first computer readable medium that when executed by a processor sends a user password and a second password to a user terminal.” A user entering a password to enter data, in Anderl, is not the same as a user terminal receiving a password after the execution of a program, as required by claim 17. Therefore, neither Mayaud nor Anderl disclose this limitation.

As amended, independent claim 17 also recites, “a second computer readable medium containing a program that when executed by a processor requests the second password when a person other than the user accesses the database containing the information.” Page 15 of the Office Action admits that Mayaud does not disclose this limitation and that Anderl does not disclose medical information. However, the Office Action argues that it would have been

obvious to combine the references to provide security. However, Mayaud teaches against this information storage. Instead, Mayaud teaches “using a dynamically assembled virtual record, and never storing it.” Col. 9, lns. 8-10. Mayaud teaches this approach in order to avoid “proliferation of a patient’s confidential history.” Col. 9, lns. 13-14. Thus, due to security concerns, the motivation offered by the Office Action, Mayaud teaches away from “a database containing the information [concerning medical treatment of a user wherein the user is a patient].” Therefore, it would not have been obvious to combine the Mayaud and Anderl.

For at least the foregoing reasons, claim 17 is patentable over Mayaud in view of Anderl. Claim 18 depends from claim 18 and contains further limitations not disclosed or suggested in the prior art. Thus, claim 18 is also patentable over Mayaud in view of Anderl.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If the Examiner believes an interview would be of assistance, the Examiner is welcome to contact the undersigned at the number listed below.

Dated: October 15, 2008

Respectfully submitted,

/Richard LaCava/

By _____

Richard LaCava

Registration No.: 41,135

DICKSTEIN SHAPIRO LLP

1177 Avenue of the Americas

New York, New York 10036-2714

(212) 277-6500

Attorney for Applicant

RLP/RL